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Paper No. 8  
GDH/gdh

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re **Code Alarm, Inc.**

Serial No. 75/620,951

**John G. Chupa** of Chupa & Alberti, P.C. for **Code Alarm, Inc.**

**David H. Stine**, Trademark Examining Attorney, Law Office 114  
(Margaret Le, Managing Attorney).

Before **Cissel, Hohein and Chapman**, Administrative Trademark  
Judges.

Opinion by Hohein, Administrative Trademark Judge:

**Code Alarm, Inc.** has filed an application to register  
the mark "SUREGUARD" for "anti-theft alarms for vehicles."<sup>1</sup>

Registration has been finally refused under Section  
2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that  
applicant's mark, when applied to its goods, so resembles the  
mark "SURE GUARD" and design, which is registered as shown below



<sup>1</sup> Ser. No. 75/620,951, filed on January 14, 1999, which is based on an  
allegation of a bona fide intention to use the mark in commerce.

for "residential burglar and fire alarm systems,"<sup>2</sup> as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed,<sup>3</sup> but an oral hearing was not requested. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence which are relevant to the factors bearing on the issue of whether there is a likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973). However, as indicated in Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976), in any likelihood of confusion analysis, two key considerations are the similarity of the goods and the similarity of the marks.<sup>4</sup>

Turning first to consideration of the respective goods, applicant argues that, unlike registrant's residential burglar and fire alarm systems, its "alarm systems are specifically made to function with automotive vehicles." Applicant contends, in view thereof, that it "markets and sells its systems to vehicle

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<sup>2</sup> Reg. No. 1,029,970, issued on January 13, 1976, which sets forth dates of first use of October 16, 1974; renewed.

<sup>3</sup> As the Examining Attorney, in his brief, accurately notes, "applicant has submitted, for the first time with the appeal brief, a substantial packet of additional evidence (designated by applicant as Exhibits A through H)." The Examining Attorney has objected to consideration of such evidence, correctly observing that the submission thereof is untimely under Trademark Rule 2.142(d). Accordingly, while the objection is sustained, it is pointed out that even if the additional evidence filed with applicant's appeal brief were to be considered, it would not make a difference in the outcome of this appeal.

<sup>4</sup> The court, in particular, pointed out that: "The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks."

security retailers, new car dealers and automakers," while registrant "sells its goods through specific home burglar and fire alarm retailers and distributors." Applicant therefore maintains that confusion is not likely because the respective goods are not competitive and are sold through different channels of trade. Applicant also asserts that, while the Examining Attorney has "indicated that some cross-over may exist in the form of a few companies that sell both automobile and home security" products, such goods "are almost always sold in separate channels of trade, or by retailers that exclusively specialize either in automotive products or in home products."

The Examining Attorney, however, correctly points out that it is well settled that goods need not be identical or even competitive in nature in order to support a finding of likelihood of confusion. It is sufficient, instead, that the goods are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief that they originate from or are in some way associated with the same producer or provider. See, e.g., Monsanto Co. v. Enviro-Chem Corp., 199 USPQ 590, 595-96 (TTAB 1978) and In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978). According to the Examining Attorney:

In this instance, there is a close and obvious relationship between the various security alarm products contemporaneously marketed by the applicant and registrant. Both registrant's residential burglar alarms and applicant's automotive alarms are

designed to detect and protect against unauthorized entry into a location, whether it is a vehicle or a dwelling. Both product lines are likely to incorporate or encompass similar technology and to include such features as motion detectors, glass breakage detectors, vibration detectors, as well as visual and/or audible warning alarms. In view of the obvious similarities in function or use and the likely overlap in specific technologies employed, the automotive alarms marketed by applicant must be considered within the likely and reasonable field of expansion for registrant.

We agree with the Examining Attorney that, in the present case, the various third-party registrations which were made of record with the initial Office Action are sufficient to establish that applicant's goods, while specifically different from registrant's goods, are nevertheless so closely related thereto in terms of similarity in function and in the technology utilized that, if sold under the same or similar marks, a likelihood of confusion as to the origin or affiliation of the respective products would result. In particular, the record in support of the Examining Attorney's position includes copies of six use-based third-party registrations of marks which, in each instance, are registered for burglar alarms for buildings, on the one hand, and anti-theft alarms for land vehicles, on the other. The record also contains two use-based registration for marks covering retail store services in the field of, inter alia, "anti-theft and burglar alarms." Although such registrations are not evidence that the different marks shown therein are in use or that the public is familiar with them, they nevertheless have some probative value to the extent that they serve to suggest that the goods listed therein are of a kind which may emanate

from a single source and that such goods may also be sold through the same retail outlets. See, e.g., In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785-86 (TTAB 1993) and In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1470 (TTAB 1988) at n. 6. Moreover, even if, despite the absence of any specific limitations as to the channels of trade therefor, the goods at issue herein were actually to be sold, as contended by applicant, through different avenues of distribution, it is still the case that the customers for vehicle anti-theft alarms and for residential burglar and fire alarm systems are the same and that such consumers would be expected to cross-shop the various retail outlets which are normal for the respective goods.

Turning, therefore, to consideration of the marks, applicant argues among other things that its mark "combines the words 'SURE' and 'GUARD' in an adjacent manner (i.e., side by side) to form a single term, 'SUREGUARD'," while registrant's mark "includes the word 'SURE' disposed over or 'on top of' the word 'GUARD', along with a logo which resembles a home and which is formed, in part, by the letter 'd'." Applicant asserts that "[t]he only similarities between the two marks lie in the terms 'SURE' and 'GUARD', which are highly suggestive and which are commonly used in various fields of security technology." In particular, applicant emphasizes that, "[d]ue to the nature of Registrant's goods (i.e., residential burglar and fire alarms), the design portion of Registrant's mark (i.e., the house design) should be accorded more weight than the suggestive words 'sure' and 'guard'." The design element, according to applicant, is the

"most significant portion of Registrant's mark" and, inasmuch as such a feature "is completely missing" from applicant's mark for its vehicle anti-theft alarms, applicant concludes that "[t]his substantial difference between the two marks serves to reduce or eliminate any potential for confusion, as it accentuates the differences between Registrant's and Applicant's products."

We concur, however, with the Examining Attorney that the respective marks are "strikingly similar in overall commercial impression." As the Examining Attorney correctly points out, a side-by-side comparison is not the proper test to be used in determining the issue of likelihood of confusion inasmuch as it is not the ordinary way that customers will be exposed to the marks. Instead, it is the similarity of the general overall commercial impression engendered by the marks which must determine, due to the fallibility of memory and the concomitant lack of perfect recall, whether confusion as to source or sponsorship is likely. The proper emphasis is accordingly on the recollection of the average purchaser, who normally retains a general rather than a specific impression of marks. See, e.g., *Envirotech Corp. v. Solaron Corp.*, 211 USPQ 724, 733 (TTAB 1981); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); and *Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller*, 477 F.2d 586, 177 USPQ 573, 574 (CCPA 1973).

Here, as the Examining Attorney further notes, "it has been consistently held that when a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling

for the goods or services." See, e.g., In re Appetito Provisions Co. Inc., 3 USPQ2d 1553, 1554 (TTAB 1987).<sup>5</sup> We agree with the Examining Attorney that when considered in their entirety, the dominant portion of registrant's mark is the literal term "SURE GUARD," which is virtually identical in sound, appearance, connotation and commercial impression to applicant's "SUREGUARD" mark. The fact that the words "SURE" and "GUARD," when used in connection with alarms, obviously "are suggestive of desirable characteristics for such goods" in that they "invoke thoughts of security, reliability, safety and protection," as applicant argues, is not a proper basis for giving greater weight to the house design in registrant's mark. This is because even though such words are suggestive, their combination engenders essentially the same overall commercial impression in applicant's mark as in registrant's mark. Such impression, as the Examining Attorney persuasively adds, is not significantly altered by the presence of a house design in registrant's mark since "prospective purchasers may well assume that the suggestive design element of registrant's mark is used to distinguish its residential line of alarms from the automotive line ... offered under the 'SUREGUARD' brand name." Considered in their entirety, the contemporaneous use of such substantially similar

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<sup>5</sup> While applicant also contends that the "stylized, lower case letters" in registrant's mark serve, along with the house design, to distinguish such mark from applicant's mark, the Examining Attorney accurately observes that, inasmuch as applicant's mark is in typed form, such a format encompasses the display thereof in any reasonable manner, including the same lower case stylized lettering as utilized by registrant in its mark. See, e.g., Phillips Petroleum Co. v. C. J. Webb, Inc., 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971) and INB National Bank v. Metrohost Inc., 22 USPQ2d 1585, 1588 (TTAB 1992).

marks as "SUREGUARD" and "SURE GUARD" and design, in connection with, respectively, such closely related goods as vehicle anti-theft alarms and residential burglar and fire alarm systems, would be likely to cause confusion as to source or sponsorship.

Applicant insists, nevertheless, that confusion is not likely because "purchasers of Applicant's and Registrant's goods exercise an extremely high degree of care in purchasing such goods, due to the nature of the respective goods." Specifically, applicant urges that, in addition to being relatively expensive purchases which would be subject to considerable deliberation, prospective customers will be highly discriminating in their selections because:

In the case of Registrant's goods, for most individuals, there is no more important priority than to protect one's home, family and self from invasion, theft, burglary, and/or fire. When purchasing a residential fire or burglary alarm, a purchaser will be extremely careful, as the safety of his or her house and the lives of his or her family are at stake. ....

The same high level of care is undertaken for purchasers of vehicle security systems. Vehicle security systems protect expensive personal property from being stolen .... These types of thefts are increasing, and selecting the appropriate vehicle security system is essential to protecting oneself against this growing problem. .... Perhaps more importantly, vehicle security systems also serve an important personal safety function. That is, many such alarms are equipped with panic buttons and remote keyless entry features which allow a user to warn-away potential attackers and to quickly enter and lock one's vehicle if a threat is encountered. For these reasons, a purchaser of a vehicle alarm system will also be extremely cautious, spend a great deal of time, and perform painstaking research before making a decision.

The Examining Attorney, on the other hand, maintains that applicant's contentions are not persuasive. As the Examining Attorney tellingly observes:

Due to the complexity of installation, it must be assumed that most, if not all, likely consumers of the respective goods will rely on the expertise of professionals for specific knowledge of the products and for its installation. As such, the actual consumer is likely to be aware only of the brand name and the general capabilities of the goods, rather than being particularly careful and/or sophisticated in the evaluation of a particular product. ....

Furthermore, even assuming that at least some purchasers in the market for alarms would nonetheless exercise a degree of care or discrimination as to the particular features wanted in a vehicle anti-theft alarm and those desired in a residential burglar and fire alarm system, it is still the case that the fact that such consumers may exercise deliberation in choosing the respective products "does not necessarily preclude their mistaking one trademark for another" or that they otherwise are entirely immune from confusion as to source or sponsorship. *Wincharger Corp. v. Rinco, Inc.*, 297 F.2d 261, 132 USPQ 289, 292 (CCPA 1962). See also *In re Decombe*, 9 USPQ2d 1812, 1814-15 (TTAB 1988); and *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983).

We accordingly conclude that purchasers and potential customers, who are familiar or acquainted with registrant's "SURE GUARD" and design mark for its residential burglar and fire alarm systems, would be likely to believe, upon encountering applicant's substantially similar "SUREGUARD" mark for its anti-theft alarms for vehicles, that such closely related alarms and

alarm systems emanate from, or are sponsored by or associated with, the same source. In particular, even among such consumers who would notice the differences in the respective marks, including the stylized house design in registrant's mark, it still would be reasonable for them to believe, for example, that applicant's "SUREGUARD" mark for its vehicle anti-theft alarms designates a new or additional product line emanating from, or sponsored by, the same source as the residential burglar and fire alarm systems offered by registrant under its "SURE GUARD" and design mark.

**Decision:** The refusal under Section 2(d) is affirmed.